

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals of the District of Columbia.

OCTOBER TERM, 1922.

No. 3912.

930

CHARLES J. SEYMOURE, APPELLANT,

vs.

DIRECTOR GENERAL OF RAILROADS.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED NOVEMBER 14, 1922.

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Court of Appeals of the District of Columbia.

OCTOBER TERM, 1922.

No. 3912.

CHARLES J. SEYMOURE, APPELLANT,

vs.

DIRECTOR GENERAL OF RAILROADS, APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

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Court of Appeals of the District of Columbia.

No. 3912.

CHARLES J. SEYMOURE, Appellant,

vs.

DIRECTOR GENERAL OF RAILROADS, Defendant.

a Supreme Court of the District of Columbia.

At Law.

No. 63103.

CHARLES J. SEYMOURE, Plaintiff,

vs.

DIRECTOR GENERAL OF RAILROADS, Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1

Amendment to Declaration.

Filed March 28, 1922.

In the Supreme Court of the District of Columbia.

At Law.

No. 63103.

CHARLES J. SEYMOURE, Plaintiff,

vs.

DIRECTOR GENERAL OF RAILROADS, Defendant.

Leave of Court first had and obtained the plaintiff amends his Declaration herein by adding thereto the following:

1—3912a

Fourth Count.

The plaintiff, Charles J. Seymoure, further sues the defendant, Director General of Railroads, having an office and doing business in the District of Columbia, for that heretofore, to wit, on April 7, 1918, and for sometime prior thereto said defendant was a common carrier of passengers engaged in business in the District of Columbia, the State of Virginia, and elsewhere, and in connection therewith maintained, operated and controlled certain railway trains, railway stations and terminals in the State Virginia including among others the railway station at Danville, Virginia, and then and there maintained, hired and controlled, employees, including special officers and railway detectives in connection with its said business, empowered by defendant among other things to guard its property and enforce its rules and regulations,

2 And, whereas, at the time and place aforesaid, the plaintiff, by the invitation of said defendant, had been conveyed on one of its said interstate trains from the District of Columbia to the said station at Danville, Virginia, and had just alighted from said train and was lawfully upon and about its said premises, as he had a right to be,

And, thereupon, it became and was the duty of said defendant to use due and proper care not only to safely carry said plaintiff on its said trains and terminal stations but also to protect said plaintiff while on said premises as aforesaid, from all injury, violence, negligence and ill-treatment at the instance of said defendant, its agents and employees, in the course of its business as aforesaid,

Yet, said defendant disregarding its duty to said plaintiff in the premises, and in violation thereof, maintained and employed as aforesaid, incompetent and reckless employees, and said defendant, by its agents, servants and employees, acting within the scope of their employment and authority, and while acting for and on behalf of said defendant, wantonly made a violent and vicious assault upon the person of said plaintiff and forcibly, carelessly and wrongfully, in the presence of other persons, struck and assaulted the said plaintiff, striking him a number of places in and about his face, head and body, knocking him down, threatening him with a revolver and with vile language, and dangerously, seriously, and permanently injuring him internally and in and about his head, face, body, arms and hands, and thereby causing him to suffer, and he will permanently suffer, great physical pain, weakness, and disability, and mental anguish and humiliation, and said plaintiff has expended sums
3 of money and incurred obligation in order to be cured of said injuries, and has lost time from his employment, with consequent loss of earnings, and his nervous system has been severely injured.

Plaintiff further says, by way of special damages, that subsequent to the acts and doings set forth in said Declaration, the same were brought to the attention of said defendant, and said defendant did not repudiate said wrongful acts of said agents servants and employees, but ratified and confirmed same.

Wherefore, plaintiff brings this action and claims damages of said defendant in the sum of Fifty thousand dollars, (\$50,000.00), besides the costs of this suit.

ALVIN L. NEWMYER,
MILTON W. KING,
'Attorneys for Plaintiff.

Fiat of Justice Hoehling.

Let the within amendment be filed.

A. A. HOEHLING,
Justice.

Pleas to Amended Declaration.

Filed March 29, 1922.

* * * * *

Now comes the defendant, and for plea to the fourth count of the amended declaration filed herein, says:

1. That he is not guilty as alleged.

4 2. And for further plea to said fourth count of said amended declaration, this defendant says that the alleged cause of action set up in said fourth count of the amended declaration, accrued to the plaintiff more than one year prior to the date of the filing of the fourth count of said amended declaration, and more than one year prior to the filing of the original declaration in this cause, and said alleged cause of action is, therefore, barred by the Statute of Limitations.

HAMILTON & HAMILTON,
Attorneys for Defendant.

Joinder of Issue.

Filed March 29, 1922.

* * * * *

The plaintiff, Charles J. Seymoure, joins issue upon the first plea filed by the defendant to the Fourth Count of the amended declaration filed herein.

A. L. NEWMYER,
M. W. KING,
'Attorneys for Plaintiff.

Memorandum.

March 29, 1922.—Demurrer to 2nd plea to 4th count of declaration sustained; jury sworn and respited.

4

C. J. SEYMOUR VS. DIRECTOR GEN. OF RAILROADS.

5

Amendment to Declaration.

Filed March 29, 1922.

* * * * *

Leave of court first had and obtained, comes now the plaintiff, Charles J. Seymour, and amends his declaration and other pleadings herein by substituting in the place of "Director General" wherever said name appears, that of "James C. Davis statutory agent for the United States" in accordance with the law in such case made and provided.

A. L. NEWMYER,
M. W. KING,
Attorneys for Plaintiff.

Fiat of Justice Hoehling.

Let within amendment be filed.

A. A. HOEHLING,
Justice.

Supreme Court of the District of Columbia.

Thursday, March 30th, 1922.

Session resumed pursuant to adjournment, Hon. William Hitz,
Justice presiding.

* * * * *

Before Judge Hoehling.

Come again the parties hereto, in manner aforesaid and the same jury that was respited yesterday and after this cause is given to the jury in charge, they upon their oath say they find in favor of the defendant. Thereupon the plaintiff by his attorney waives
6 the time under the Rule of Court, within which to file a motion for a new trial and judgment is ordered.

Wherefore, it is considered that plaintiff take nothing by this action, that defendant go hence without day, be for nothing held and recover of plaintiff his costs of defense, to be taxed by the clerk and have execution thereof.

From the foregoing judgment, the plaintiff by his attorney, in open court, notes an appeal to the Court of Appeals, whereupon, the maximum of an undertaking for costs is hereby fixed in the sum of One Hundred Dollars, with leave to deposit the sum of Fifty Dollars, with the clerk, in lieu thereof.

Memoranda.

April 7, 1922.—Undertaking on appeal approved and filed.

April 10, 1922.—Notice of submission of bill of exceptions and acknowledgment of service, filed.

Assignment of Errors.

Filed April 10, 1922.

* * * * *

The trial court erred as follows:

1. In directing a verdict in favor of the defendant upon the evidence presented.

7 2. In holding as a matter of law that the evidence was insufficient to show that the Special Officer was acting in the course of his employment as special officer of the defendant at the time and place in question.

3. In refusing to permit the plaintiff to recall the witness Regan for the purpose of adducing further proof with respect to his presence on the premises, etc.

4. In refusing to submit to the jury the issue as presented by the evidence concerning the acts of the witness Regan as being within the scope of his employment by the defendant.

NEWMYER & KING.

Designation of Record.

Filed April 10, 1922.

* * * * *

The Clerk will please include in the record on appeal the following:

- (1) Amended declaration (4th Count).
- (2) Pleas of defendant to Amended Declaration.
- (3) Joinder in issue on 1st plea and note of demurrer sustained to 2nd plea.
- (4) Amendment substituting statutory agent for Director General.
- (5) Jury sworn, verdict directed for defendant.
- (6) Judgment on verdict.
- (7) Appeal noted and memo. of bond approved and filed.
- (8) Assignment of Errors.
- (9) Bill of Exceptions *and* submitted, signed, and filed.
- (10) This Designation of Record.

NEWMYER & KING,
Attorneys for Plaintiff.

Memorandum.

April 22, 1922.—Bill of exceptions submitted.

Supreme Court of the District of Columbia.

Friday, November 10th, 1922.

Session resumed pursuant to adjournment, Hon. A. A. Hoehling, Justice, presiding.

* * * * *

The Court having this day signed the bill of exceptions taken at the trial of this cause, and heretofore submitted, as of the time of the noting thereof, now hereby orders the same of record, nunc pro tunc.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 8, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 63103 at Law, wherein Charles J. Seymoure is Plaintiff and Director General of Railroads is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 14th day of November, 1922.

[Seal Supreme Court of the District of Columbia.]

MORGAN H. BEACH,
Clerk.

E. W.

10 In the Supreme Court of the District of Columbia.

At Law.

No. 63,103.

CHARLES J. SEYMOUR, Plaintiff,

v.

DIRECTOR GENERAL OF RAILROADS.

Plaintiff's Bill of Exceptions.

At the trial of the above entitled cause, the plaintiff, to maintain the issues on his part joined, testified as follows:

In 1918 I was employed by the Union News Company, which company had charge of the sale of magazines, fruit and candy on trains. I had been employed by said company a number of years, and had never done anything else. In 1918, on the occasion referred to in the declaration, I was assigned to trains 29 and 30. I had been on that run for about two years. That train was known as the Birmingham Special, and left Washington about 3.45 P. M., and got to Danville at about 11 something that night. It was my duty to get off at Danville and wait for my other train No. 30 coming back. We reached Danville that night after 11 o'clock, or nearly midnight. The office man at the Union Station supplied me with stuff to sell in the baggage room. I wear uniform cap and am not allowed to work in the train until after the conductor has collected tickets. I sold candy, cigarettes, magazines, papers, bonbons, novels and weekly and daily papers on the train, and they were given
11 to me for that purpose by the manager of the Union News Company, and was charged with them. I received 18 per cent on the gross receipts from sales. I generally occupied one seat, taking the stuff out of the baggage room to this one seat, unless people were standing, then the conductor requested me to put the stuff in the vestibule. On this occasion I did not have the use of a seat in the passenger car until I got to Chatham, about 28 miles from Danville. I was acquainted with a lady and gentleman on the car and had seen them a week before the accident, coming down on the train from Manassas. I saw them after we got to Washington, and took them to a hotel that I recommended to them. They were man and wife, and I also took them sightseeing. On the day of the accident I had occasion to talk with them once or twice, and loaned them some magazines. After we left Chatham I took all my stuff back to the coach and put them in the hamper. When I arrived at Danville, I was in the baggage car and we had to pay a colored porter to take them to the baggage room. After doing this, I was coming down the platform following the truck which had my things on it, and which was ahead of me on my way to the baggage room. When I got about half way from the first ladies'

coach, this gentleman discovered me, and raised the window up and called to me and said that I had forgot to get the magazines that I had loaned him. I went back to receive my things, shook hands with him, and they said good-bye. I did not go in the train but was on the platform by the window. I then started to go down the platform when this man Regan came up behind me and grabbed me with his hands and said "What do you mean by flirting?" I

12 said "You are mistaken, sir. I was not flirting." He said "What do you mean? Do you mean to call me a liar?" And he turned around and walloped me there, and I got dizzy, only I tried to brace up as much as I could, and he walloped me again. He was bigger than I was, and I just had to surrender. I told him to please let me alone, that I was not bothering him and he walloped me again in the face. Then I was in great pain. I got away from him and wanted to go up and get off on the train going back to Washington. Dudley, the train porter, saw my condition on the train going back to Washington. He fixed up a place in the baggage car so I could lie down. This man had kicked me in the stomach and abdomen and I was in pain. He was dragging me along the platform and my finger got caught in between a crack and it broke the nail off and when I got in the baggage room really I could not tell you what he had done to me. He had me down and told me if I did not quit screaming he would shoot me and he pulled a gun out of his pocket and threatened my life. He did not say why he grabbed me the second time. He dragged me down towards the baggage room, down the platform. He said you will try to get names and witnesses. I'll show you you can't do that. I have a mark on my neck where he struck me.

Witness then showed the jury various scars on his face, neck, hand and wrist. The scar on the wrist was caused by a splinter when he dragged me across the platform. When he let me up I was in the baggage room, and the first thing I did was to inquire about a doctor. I inquired from the night baggage man down there. I was in pain and wanted a doctor. My coat was ripped and the trousers had a cut in them, my shoes were skinned off, and I was
13 dusty and dirty, and there was blood on my clothes. The baggage man gave me the address of a doctor and told me to telephone him. That was about one o'clock in the morning. I walked to the doctor's residence. I felt better walking than when I was sitting down. The doctor I saw was Dr. Robinson. When I went in I told him that I was in pain, that I was employed by the Union News Company, and that I had been badly beaten up by the detective Regan. He asked me if I did not think it would be advisable to stay in the hospital over night but I told him I preferred to go back, and the doctor gave me a glass of something purple to drink, and that made me feel a little better and I went back to the station again. I did not do anything there but wait around the baggage room for No. 30 to come in. While waiting there I saw Regan and heard him over the telephone inquiring of the doctor how bad I was hurt. I overheard most of the conversation. I sat there with my head in my hands until the train

came, which was nearly 3 o'clock. I boarded that train by getting on the baggage car. I had a conversation with the train porter. In the baggage room I got up where the mail sacks were and I laid there all the way to Washington, suffering. I got to Washington between 2 and 3 o'clock the next afternoon. I then went to Mr. Lewis' office, turned in all sales and then went up to see Dr. Crisp. At that time my abdomen was swollen and I had pain in my stomach and I had to walk just like that (indicating by stretching his legs apart). Since that occurrence I have suffered headaches and pains and my stomach is always swollen. It makes me have dizzy spells.

14 That condition has continued to the present time. I did not have that trouble before this occurrence. I have constipation and my stomach is always sore. I never suffered that way before except that I have been ruptured. I am 4 feet 9 inches tall in my bare feet, and weigh 86 pounds stripped. When Mr. Regan grabbed me, his language was fierce and awful. I had never had any trouble with him before. He did not pull his gun until the last time he had me down. When he dragged me across the platform he had the gun in his hand until he got in the baggage room, and then stuck it in his pocket again. After I went back to work I would make a trip and feel bad and would then lose a trip or two, then I would go on another trip and would lose a trip or two, and this continued for quite awhile.

Cross-examination:

I worked for the Union News Company 15 or 20 years, was transferred from one place to another in order to be able to go around and see the United States. The occurrence involved in this case took place in the month of April, if I am not mistaken, or May. I think it was during the month of April, 1918. I know it was in the year 1918. I did not know that I was not working for the Union News Company during the month of April, 1918. I kept no memorandum of dates. I asked a number of employes around Danville station to give me their names as witnesses but none of them would do it. They all refused and I did not make a memorandum of the date. The first attorney I took this case to was Mr. Daniel W. Baker, then I went to Mr. Norman S. Bowles. I did not write a report of this matter to Mr. Becker, of the Union News Company. My attorney took care of that. I cannot recall what month this occurrence took place in. In March 1918 I was working for Mr. Lewis on trains going South from Washington. I do not recollect the fact to be that I was running out of Pennsylvania on the Reading Railroad in that month. I do not think I was working on the Reading in March 1918. In the summers of 1919, 1920 and 1921, I was traveling and exhibiting a little pin with the Lord's Prayer engraved on the head of it. I was letting people on the street corners in Baltimore look at the pin through a microscope at 5 cents a look. I was also in Norfolk with it and at Virginia Beach. That was the summer of 1920. I left the Union News Company's service finally about four months after I got beat up. I do not remember

that it was January 1919 that I finally left the Union News Company. I was discharged by Mr. Lewis. At the time of this assault I would sometimes get off the train at Danville, sometimes at Monroe and wait for the other train. I was supposed to go through to Greensboro. I got off regularly at Danville because I wanted to get some sleep. I think my run was to Danville, if I am not mistaken, and I was not supposed to go through to Greensboro. I always got off at Danville, as I had to get some rest. I had the names and addresses of the man and wife that I met on the train and I gave it to my attorney, Mr. Bowles, but I have forgotten their names now. I don't know where the memorandum is that I gave Mr. Bowles. When the train pulled into Danville I was in the baggage car with my stuff, ready for the porter to put it on the truck. I arranged with the porter to take the stuff to the baggage room, and I
16 got out of the car and walked down the platform to the coach, where this lady and gentleman were seated, which was about half way down the train. I did not attract their attention, they saw me and the man raised the window and handed me a magazine. He shook hands with me but the lady did not. She said good-bye. If I am not mistaken, they were going to Atlanta, riding in the day coach. I do not recall whether the man closed the window when he said good-bye. I had finished talking to him when Officer Regan came up and grabbed hold of me. I was standing right there on the platform. There was no lady sitting next to the window with her head on the back of the seat and her eyes closed, apparently asleep when he spoke to me, and I did not reach up and rap on the window and try to wake her up. Mr. Regan accused me of trying to flirt with the lady in the car. He just told me "What do you mean by flirting with the people on the train?" I told him he was mistaken.

Q. You knew it was against the rules of the railroad company and the regulations of the city for people to flirt with people on the trains there? A. I do not see why it was flirting. I was saying good-bye.

Q. And you knew it was against the regulations of the Union News Company? A. I was off duty then.

Witness: Officer Regan did not come up while I was standing on the platform by the window and before the train had actually started to leave. When I was walking down he came up and caught me. I did not say a moment ago I was standing there and had been talking to these people at the window. I said he followed me down. I
17 was walking towards the rear of the train, going to the baggage room. The train was headed south, and Mr. Regan came from that direction. I had gotten away from the window and nearly to the end of the coach when he came up. After he said "What do you mean, calling me a liar," he just walloped me there, and when he did that I was practically gone. I don't know how many times he hit me. He knocked me down, and then he pulled his gun on me while I was lying on the ground. I don't know why he pulled his gun. I was not fighting back at him, I was afraid to hit him, or to make a move. I never hit back at him or showed any fight at all. I was just pleading with him, and asking him to

let me alone. I do not know how far that was from the baggage car. He dragged me along to the baggage room and said he would lock me up. He had hold of my collar. I got up before we got to the baggage room and he let me go. I judge he dragged me as far as from here to that doorway there (indicating). I just made up my mind to get up, as we had to cross a track to get to the baggage room and an engine was coming. I do not know how far it was we walked to the crossing. Before we got to the baggage room door he put the pistol in his pocket. He did not go in the baggage room with me. I don't know what became of him. I went in the baggage room and inquired for a doctor. The second time he assaulted me the train was pulling out. I could see the light on the rear. Can't say how far that was from the place where he first assaulted me. Don't know why he assaulted me the second time. He had no reason for so doing, as I said nothing to him. We were walking along then

18 and he had hold of me. My nose just comes up to his stomach and he hit me in the mouth and nose and I went down. That was the last time that he assaulted me. While

I was down on the ground he hit me in the stomach and threatened to kill me. He dragged me after assaulting me the second time. He did not drag me after the first assault, he simply had me by the arm and coat collar. I did not curse him or say anything to make him hit me. I would be afraid to use vile language towards him. I did not call him any names. While he was assaulting me and dragging me along the platform the two porters with the truck had already gotten to the baggage room. It is not my recollection that they were following immediately behind Regan and myself. I left the porters at the baggage car and walked north to the rear of the train, and from that time on until we got to the baggage room I do not know what became of the porters. I did not notice anything they did. I asked them afterwards if they would give me their names and a written statement and they declined to do so. The nail on the little finger of my right hand was broken while I was being dragged on the platform. I do not think I had that finger hurt before this assault. It is not true that it was in the condition it now is for years before this accident. I got the splinter in my hand right here (indicating). My right hand has been hurt before. The baggage car door closed on it, on the Reading Railroad. I can't remember if it was hurt in March 1918. I left working on the Reading after that hand was hurt, and came to Washington. Don't know when that was. Can't remember how long after that I went to work at Washington for the Union News Company. I judge that I had

19 been out of work about two months. Can't say whether it was May or June 1918 that I went back to work for the Union News Company. After the night baggage man at Danville

gave me the name of a doctor and his address, I started out to see him. He lived a mile and a quarter to a mile and a half from the station, but Mr. Regan did not go part of the way with me. I went by myself. He did not walk off the station platform with me in custody, saying he was going to lock me up. He let me go before I got to the baggage room. It was while he was dragging me that

he said he was going to lock me up and he did not take me off the premises and walk me down the street towards the station house, and I did not beg him to let me go because I was afraid of losing my stock of goods at the station. He did not walk me up the street two or three blocks before he let me go. He did not let me go in front of a Greek restaurant on Craighead Street. I went in the restaurant and got a cup of coffee and then went on to Dr. Robinson, and after that I went back to the station where I saw Regan again but did not have any conversation with him. I boarded No. 30 when it came in about 3 oclock and went to Washington.

Redirect examination:

In 1919 and 1920 I was exhibiting a pin with the Lord's prayer on it, and also was showing a fly under a microscope. The pin is a difficult piece of workmanship and the fly was to educate the public not to eat and drink after the fly, and for mothers to keep their babies' food away from flies. I have shown these things throughout the country. I am now employed in the insurance business.

20 Thereupon the plaintiff, to further maintain the issues on his part joined, called as a witness Dr. THOMAS B. CRISP, who testified as follows:

I have been a practicing physician in the District of Columbia since 1919. Prior to that I was interne at the George Washington Hospital for 15 months. Am also connected with the U. S. Public Health Service for the past three years. Plaintiff Seymoure came to the hospital to see me in 1918 and asked for treatment. At that time I advised that he remain in the Hospital. He had several minor cuts about his neck and complained of pain in his hand. There was a contusion on the joint. The finger at that time was apparently straight, but afterwards it must have been fractured. That was the right little finger. The main thing I noted was an enlargement of both testicles which were slowly swelling; contusion on the lower part of the abdomen, not so marked on the first day of the examination but more so on the second and third days. That is, the swelling had taken place, and the contusion became greater, but this gradually subsided afterwards. I think there was an abrasion on the right left forehead but that I do not quite recollect. There was an abrasion on the back of the neck. When he first came to me there was evidence that his nose had been bleeding, and there was a slight cut on his lip. I do not recall seeing any blood on his person. He was highly nervous and excitable. He came to see me at different intervals, complaining of pain and sleeplessness. After I went into general practice, I treated him for external hemorrhoids. I treated him about two or three months. There was a contusion on that finger of the plaintiff (indicating) and there was an abrasion here (indicating) and there was evidence here of a punctured wound as if someone had jabbed something in and had pulled it out (indicating on the hand). One of his eyes was blackened and his nose indicated that it had been bleeding. The

21

main thing I examined him for was this condition here of the abdomen. This man has a congenital deformity, that is, a condition that has existed since birth. The bowels are dropped full below on the brim of the pelvis, a drop of 6 or 8 inches from the normal position. This probably is congenital and has existed probably 10 or 15 years, and is due to muscular relaxation of the abdominal walls not giving proper support to the intestines. The whole intestines had dropped away down where ruptures usually occur. There were bruises and both testicles were slightly swollen which were more marked on the second and third day of the examination. The complications of an injury received in this part of the abdomen is that a person usually with this kind of injury or deformity suffers from constipation. I questioned the plaintiff at the time of the examination and he stated that he had not so suffered, but shortly afterwards constipation did set in more marked as time went on, and the only thing I could figure out was that his intestines were in such a small position, without the proper abdominal protection, that adhesions had occurred in and around the intestines due to some blood that had spread. The other condition is more or less a permanent injury and is something that cannot be operated on, due to a marked relaxation of the abdominal walls. I am referring to congenital deformity plus the adhesion. The adhesion cannot be eliminated, due to the congenital deformity. Some eight or ten months afterwards, the plaintiff complained of marked constipation. I think he

22 had returned from Baltimore and I was called to see him one night, apparently suffering from external hemorrhoids. He is suffering now mostly from nervousness and constipation. When a man has a deformity in the lower abdomen, it is probably a pretty serious thing to go out and get another injury where he had really the vital parts of his gastro-intestinal tract located. When I examined the plaintiff, I saw marks of bruises on the lower abdomen. I cannot say how they were caused, but his statement was that it was caused by a blow of some kind.

Q. Now, doctor, assuming that the bruises which you say were caused by the blows that he received there and you found this condition afterward of adhesion, in your opinion what is this adhesion?

A. The adhesion from the history of no constipation noted, and the presence of external hemorrhoids, there is only one synopsis and that is that the adhesion had formed as a result of this condition.

Q. And this latter condition was caused due to the blow? A. Due to the new form of adhesions from this injury.

Cross-examination:

I have no personal knowledge of any injuries plaintiff received, and took his statement for that. I said he might have had a congenital deformity or a condition acquired early in life. By that we mean it is something that comes on with age and may be aggravated from birth, and in certain cases a man may be born in that condition. They have a weakness at that point so would call it a congenital weakness existing from birth or near birth. A congenital de-

formity of the kind described is sometimes accompanied by constipation, and sometimes not. I should say in 50% of such cases you find constipation. Adhesions do not result from a congenital deformity of this kind. By adhesions in this case I mean loops
23 in the intestines; in the covering of the intestines. Hemorrhoids did not develop in this case until six months after the plaintiff first came to me. They are the result of constipation. I cannot state the month or the year that he first came to me, but it was during the 15 months that I was interne at the hospital in 1918 or 1919. I graduated in September, 1919. There was an abrasion, that is, a breaking of the skin on the wrist, as though something had been jabbed in the skin. There was nothing serious about that. There was a relaxation of the ligaments on the little finger, showing a fracture had taken place at sometime, and when he came in, the finger was swollen. I did not put it in plaster, or anything like that. I do not remember whether he told me that finger had been broken years before he came to see me. I took down notes of my treatment of Seymoure because he said that he would probably enter suit for his injuries, and I keep the notes in my pass book but they have no date. I found an abrasion on his neck where the skin had been broken, and there was also a slight abrasion on the forehead. The places looked like they had been scratched. I do not remember which eye was black, but he had an abrasion on the nose, as if he might have been hit or had run into something.

Thereupon the plaintiff, to further maintain the issues on his part joined, called as a witness THOMAS DUDLEY, who testified as follows:

In 1918 I was train porter for the Southern Railway on train 29. I know the plaintiff. Had seen him on train 29 in his employment with the Union News Company. I guess he made the run
24 with me for about eight months. I recall his being on train 29 with me one night in 1918. I saw him a trip after that, which was about four days later, and I noticed some scratches on him in several places, and some dark places about his eye and face. Did not notice anything wrong with his stomach. He walked like he was crippled.

Cross-examination:

I do not know what month it was, and have no recollection at all when it was.

Redirect examination:

I did not particularly notice any marks on his face but I did notice that there were scratches on his face and dark places around his eye. Don't remember which eye. He was attending to his usual duties in representing the News Company on the train.

Thereupon the plaintiff, to further maintain the issues on his part joined, called as a witness FRED A. REGAN, who testified as follows:

I live at Danville, Va., and lived there in 1918. I was employed in 1918 by the Southern Railway Company as a special officer. My duties were police duties of the Railway Company, and also of the city of Danville. My police duties with the Railway Company covered the Danville Division, between Monroe, Va., and Salisbury, N. C. I was paid by the Southern Railway Company. I have a badge as special officer. In doing police duty for the Railway Company I would patrol the railroad property. That included the station where trains came in and went out. I was supposed to
25 keep order among passengers, employes and other persons at the station.

Cross-examination:

I had to take an oath as a special officer before the judge of the Corporation Court. I was special officer to do police duty around the Southern Railway Company's property, and also in the City of Danville, and had to take two oaths, one was taken before the Mayor and one before the judge of the Corporation Court, under the State laws. I receive my salary for police duty for protecting the railroad properties from the Southern Railway Company, and I was also special officer for the City of Danville, operating with the Police Department there, and was authorized to arrest anybody for violations of the State laws, both as police officer of Danville and as special officer of the railway company. I would take prisoners to the city jail.

Thereupon the witness was asked the following question:

Q. If you made an arrest for any reason on the railroad property of the Southern Railway Company, what would you do with the prisoner?

To which question plaintiff by his counsel then and there objected but the court overruled the objection and allowed the witness to answer; to which ruling plaintiff by his counsel then and there duly excepted, and said exception was noted on the minutes of the court.

Witness: I would take him to the city jail, and he would be tried by the Mayor. I have been special officer for two years.

Redirect examination:

My service as special officer began in the first part of 1917. I can't remember the exact date. My service as special officer
26 with the railroad company ended in 1919, August 27th. I received the city appointment first.

Thereupon the plaintiff, to further maintain the issues on his part joined, called as a witness DAVID MAJORS, who testified as follows:

In 1918 I was working as a train porter for the Southern Railway Company. I know the plaintiff was employed in 1918 by the Union News Company on Southern Railway trains. Saw him frequently.

In that year I was working on trains 29 and 30. I recall Seymoure going on train 30 and returning to Washington sometime in 1918. He got on the train at Danville and I saw him in the baggage car. I noticed his face was scratched and one eye was swollen. He was lying across a trunk when I saw him. He said his stomach hurt him, and asked if I could give him a place to lie down, and I got some mail sacks for him to lie on. I saw him once or twice after that day in the baggage room but did not pay much attention to him. The run from Danville to Washington takes about seven hours, and we got in about 12.25. I do not remember the month or year of this occurrence.

Cross-examination :

I did not see Seymoure get on the train at Danville. I believe he got on at Danville, but when I saw him he was in the baggage car. He usually got on at Danville coming back to Washington. All I know is that on one occasion after we left Danville, I saw him in the baggage car lying on a trunk, and he said he was sick and his stomach hurt him and his face was scratched.

27 This was all the evidence offered on behalf of the plaintiff, and counsel for plaintiff announced his case as closed.

Whereupon the defendant, by its counsel, moved the court, upon the plaintiff's evidence, to instruct the jury to return a verdict for the defendant, the reason urged and argued in support of said motion being that the evidence showed that at the time of the alleged assault, the witness Regan was acting under authority of and in the performance of his duty and authority as a city police officer of Danville, and also as a special police officer appointed for the protection of the property of the defendant at Danville, and at the time of said assault was not an agent, servant or employe of the defendant, acting within the scope and performance of his duties as such. Said motion, after argument, was taken under consideration by the court, and thereupon the court rendered the following decision :

The Court: I may state, in explanation of the tardiness of the Court, that I have been engaged in looking up the authorities which have been cited on both sides, and I can say that I have looked them all up carefully.

This is an action by the plaintiff to recover damages in the sum of \$50,000 from the defendant by reason of certain personal injuries, both temporary and permanent, alleged to have been sustained by an assault committed upon the plaintiff in 1918, the date being variously stated as April — and as April 7, of that year.

The declaration is filed in four counts, the first count alleging that the defendant made a violent and vicious assault upon plaintiff, whereby he was injured, etc.; the remaining counts charge the assault to have been committed at the railroad station of defendant, at Danville, Virginia, by the agents, servants and employes of defendant, acting within the scope and within the

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performance of their duties as such and acting for and on behalf of the defendant.

The testimony offered on behalf of the plaintiff is to the effect that plaintiff on the occasion mentioned, as well as prior thereto, was and had been in the employ of the Union News company and as such made runs on the trains of defendant between Washington and either Danville, Virginia, or Greensboro, South Carolina, and that he made sale to the passengers on the trains of sandies, cigarettes, magazines, etc.; that at or about the time in question, he was assigned to the run of Train No. 29, the Birmingham Special, which left Washington at about 3.45 p. m. and arrived at Danville somewhere around 11 o'clock or thereafter at night; that he would leave the train at Danville and then return to Washington on Train No. 30 which came through there later on that night; That on the occasion in question, there was a man and his wife on the day coach of the train, whose acquaintance he had made on the trip to Washington a week before, and that he loaned them on this trip one or more magazines to read; that after leaving Chatham, about 26 miles from Danville, he placed his goods in a hamper, and, upon the arrival of the train at Danville, his things were put on a truck and turned over to a colored boy from the baggage room for the purpose of wheeling the

29 same to the baggage room; that as he, plaintiff, was proceeding down the platform, the man to whom he had made loan of the magazines raised the window and returned to him the loaned magazines, which plaintiff had forgotten to collect, shook hands with him through the window, and the man's wife called out good-bye to him; that thereupon, or immediately or shortly thereafter, one Fleet Regan came up, accused him of flirting, which the plaintiff denied, some words passed, and that thereupon Regan violently assaulted him, struck him in the face and on the head, knocked him down, dragged him along the platform, said he was going to lock him up, pulled a pistol from his pocket, and threatened to kill him, but finally released him.

The plaintiff, a little later, visited a doctor at Danville, who made an examination of him and gave him something kind of purple which he drank and which made him feel a little better; that he then went back to the station and finally returned to Washington on the No. 30 train. Further evidence was given tending to show the nature and extent of his injuries and the treatment received by him therefor.

The only testimony in the case concerning the identity of Fleet Regan and his connection with defendant is found in the testimony of Regan himself, who was called by the plaintiff as a witness. He testified that he was a police officer for the City of Danville, Virginia, taking his oath as such before the Mayor; that he wore a badge; and that he was also a special officer for the Southern Railway, assigned to the Danville Division, and as such took oath before the Corporation Court of the City of Danville; that he performed police duties for the
30 City of Danville, and also for the Railway Company, and that his duties for the latter were to patrol the railroad properties, the station, and when trains came in to keep order among

passengers and other employes, etc.; that he was paid by the Railway Company for defending the Railway properties; that he could arrest for violation of city ordinances; that he could take persons to the City Jail, arrested on railroad properties, and they would be tried by the Mayor; that his services began the first part of 1917 and ended August 27, 1919; that he was a special officer for about two years, and that he received his city appointment first.

By an Act approved March 14, 1904, it was enacted by the General Assembly of Virginia that the President or any other executive officer of any railroad company incorporated by that state might, with the approbation of the Circuit Court of any county, or the corporation of Hustings Court of any city through which the road passes or has its chief office, appoint one or more police agents, who shall have authority, in all cases in which the rights of such railroad company are involved, to exercise within the state all powers which can be lawfully exercised by any constable or police officer for the preservation of the peace, the arrest of offenders and disorderly persons, and for the enforcement of laws against crimes.

The Act further gave to conductors of railway trains and station depot agents certain rights and authority as conservators of the peace, with power to make arrest, etc., that part of the Act, however, not here being material.

In the instant case and under the state of the evidence adduced on behalf of plaintiff, the situation, in brief, seems to be substantially thus:

31 On and prior to the occasion in question, one Fleet Regan was a police officer of the City of Danville, Va., having become such by appointment and oath taken before the Mayor of that city some time in the early part of 1917. Later on he was appointed and took oath before the Corporation Court of Danville as a police agent or special officer assigned to the Railway Company at Danville, and his duties and powers in that regard were, as I have outlined, for protecting the railroad properties, station, preserving order, etc.; and he was paid a salary by the company. It does not appear in the case just how much of his time Regan devoted to the policing of the railroad properties and how much to the policing of the City of Danville, the fact in that regard, so far as disclosed by the testimony, being that he was both a police officer for the City of Danville and, as he described it in his testimony, a special officer, or as described in said act of 1904, a police agent, for the performance of police duties for the Railway Company, and in the latter capacity, defined by the Act mentioned, he had "authority in all cases in which the rights of such Railroad Company are involved, to exercise within the state, all powers which can be lawfully exercised by any constable or police officer for the preservation of the peace, the arrest of offenders, and disorderly persons, and for the enforcement of laws against crimes."

Upon the occasion in question Regan was on the railroad platform engaged in this occurrence with plaintiff and, taking hold of his person with force, dragged him along the platform, stating

32 that he was going to lock plaintiff up, but finally released him before reaching the baggage room.

There is no evidence in the case that anyone connected with the Railroad Company was present or in any manner or way directed, aided, counseled, or participated in the occurrence, and it seems to have been a matter and an occurrence, from beginning to end, absolutely between the two parties, plaintiff and Regan.

There is no question from the evidence thus far submitted that plaintiff was subjected to an unwarranted and brutal assault by Regan and that, if Regan can be said to have been at the time an agent, servant, or employe of defendant, acting within the scope and performance of his duties as such, and acting for and on behalf of the defendant, the latter would be liable.

Of course, thus far there has only been present, and is now only considered, the case of plaintiff. It may be that there is another side to the story, but for the present purposes I am taking the case as it has been made by the plaintiff, himself.

The question, therefore, is simply this: Was Regan so representative of the company at the time of this occurrence as to make his act one for which the company is responsible and answerable?

33 In this case we have the fact that Regan was a city police officer of Danville, and that he was also a special police officer for the protection of the property of the railroad Company at Danville, and presumably he made it his business, and perhaps it was his duty, to be at and around the railroad station upon the arrival and departure of trains. He was paid by the Company for protecting its property as such special officer. It does not appear that he was employed in any other capacity by defendant than as a policeman, or that defendant had or exercised any control over him as policeman, or otherwise, or that such officer was charged with or had ever performed, while in the service of defendant, duties other than those which pertained to the office of a policeman, or that in doing what he did, he was enforcing any regulation, rule, or by-law of the defendant, or any order of any of its officers or agents; it affirmatively appearing that the illegal acts complained of were committed by him without the knowledge, direction, or consent, express or implied, of any officer or agent of the defendant.

It does not appear that Regan was under the control, direction or authority of defendant, or, if so, to what extent, or that he was required to report to anyone representing the defendant, or that he was required to be there at any particular time or times, or that he was under the regulation or control of the defendant, or any of its officers or agents in respect of his movements, the times of service, or duty.

I have examined, with as much care as has been possible within the limited time afforded, the numerous cases cited by counsel for the respective parties, and I may remark that, as unfortunately is so often the case concerning questions of law, due to the fact that under our judicial system we have so many courts, state and federal, separately functioning, there is to be found a lack of uniformity in decision.

34 So far as concerns our own present Appellate Tribunal, the Court of Appeals, the question apparently has not been presented or passed upon. It was, however, passed upon by the former Court in General Term of this District, in the case of Wells v. Washington Market Company, 19th D. C. 385, wherein the opinion was delivered by the late Justice Cox, and that decision, if here applied, would absolve the defendant from liability in this case.

My attention has been called by counsel for defendant to a *nisi prius* holding of one of my associates in the case of Jesse Brooks v. Washington Terminal Company, Law No. 57898, where, on April 28, 1921, under a somewhat similar situation of facts, a verdict was directed for the defendant. So far as I have been advised, that case proceeded no further.

Believing, as I do, in uniformity of decision, so far as concerns the individual jurisdiction, and finding that the question to date in this jurisdiction seems to have been resolved in favor of a corporation situated as is the defendant in this case, I feel constrained to hold that the plaintiff has failed to make out any *prima facie* case of liability as against the defendant, proper or sufficient to be submitted to a jury. Accordingly, the motion of defendant for a directed verdict in its favor should be granted, and it is so ordered.

Whereupon, the following proceedings took place:

Mr. Newmyer: If your Honor please, before the entry of the order, may I invite your Honor's attention to the testimony on
35 behalf of the plaintiff, to the effect that as Regan approached this plaintiff, he said to him substantially "What do you mean, flirting with a passenger?" Now, attempting to draw a line between his duties as a police officer for the Railway and for the City, certainly I respectfully submit, your Honor, that that fact in the case is evidence that in his approach to the plaintiff, and in his conversation with the plaintiff, he was having regard, and looking after the interests of the Railroad Company, because he referred to the plaintiff's conduct with a passenger then on a railroad train. Your Honor did not mention that in the opinion. I do not know whether your Honor had that in mind or not.

The Court: I had that in mind. I did mention that he accused him of flirting. I left out the words "with a passenger".

Mr. Newmyer: We submit, if your Honor please, under the evidence in the case, the question as to in which capacity he was acting was a question of fact for the jury to determine. May we ask permission of the Court to reopen the case, and to recall Mr. Regan for one or two additional questions?

Mr. Hamilton: I submit that he ought not to be allowed to do that.

The Court: Suppose you step to the bench, and state to the Court, in the presence of counsel, what it is you want to ask him.

(The following ensued at the bench, out of the hearing of the jury.)

Mr. Newmyer: The matters I wish to recall the Witness Regan for related to the question as to how much of his time as
36 special officer he devoted to the Railway, and how much to his duties as city policeman, and also as to whether or not he had received any instructions or had knowledge of any regulations of the Railway Company with respect to the conduct of persons on trains or platforms, concerning flirting, and to whom he reported for the Railway.

Mr. Hamilton: We object to that, and understand your Honor has intimated that the record should stand as already made.

Mr. Newmyer: Your Honor says, I believe, that the record is clear on that.

The Court: I think the record as now made clearly raises the question of law that is involved, upon which you could go up.

Mr. Newmyer: We would like to except, if your Honor please, to your Honor's—

The Court (interposing): Granting the motion for a directed verdict?

Mr. Newmyer (continuing): First, to your Honor's failing to permit us to reopen the case for that purpose, and also to your Honor's granting the motion for a directed verdict. Your Honor, I am sure, has gone carefully into the matter. I suppose it would not do very much good to have the following motion for a new trial?

The Court: I have given you both as fair consideration as possible. I have looked up every authority that was up there, and also made an independent investigation last night.

Mr. Newmyer: I am satisfied your Honor has reviewed the
37 authorities. May we then have the judgment entered, and note an appeal in open court?

Mr. Hamilton: If you have any idea of taking an appeal, I think we should be permitted, on appeal, to contend, in addition to what was said before the Court, that this action cannot be maintained under the Federal legislation relating to the taking over of the railroad companies. It is not such a character of action as the Federal Government has given its consent to be sued in. I simply want to make that plain.

Mr. Newmyer: That point was not raised, and I want to object to it.

Mr. Hamilton: I simply want to notify you of that.

To the ruling of the court in refusing to permit plaintiff to reopen his case and also in granting said motion for a directed verdict, plaintiff then and there duly excepted, and said exceptions were noted upon the minutes of the court.

Whereupon the jury, by direction of the court, returned a verdict for the defendant.

Be it remembered that the foregoing comprises the substance of all the testimony in this case and all the proceedings in the trial thereof, and all the exceptions reserved by the plaintiff and allowed

by the court were so taken and allowed before the jury retired, and were noted upon its minutes, and counsel for plaintiff then and there prayed the court to sign this his bill of exceptions, to have the same force and effect as if said exceptions had been separately and severally set out in separate bills of exceptions, and the same is accordingly signed and made part of the record in this case, now for then, this 10th day of November, A. D. 1922.

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A. A. HOEHLING,
Justice.

Endorsed on cover: District of Columbia Supreme Court. No. 3912. Charles J. Seymoure, appellant, vs. Director General of Railroads. Court of Appeals, District of Columbia. Filed Nov. 14, 1922. Henry W. Hodges, clerk.

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